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IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CRR-3041-2011  
Date of Decision: 04.03.2024

Laxman Dass

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Devapsh Khanna, Advocate  
for Mr. Vaibhav Khanna, Advocate  
for the petitioner

Mr. Vikas Bharadwaj, AAG, Haryana.

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Harpreet Singh Brar, J. (Oral)

1. The present revision petition against the judgment dated 28.11.2011 passed by learned Sessions Judge, Fatehabad whereby the appeal against judgement of conviction dated 27.10.2009 and order of sentence dated 28.10.2009 passed by learned Additional Chief Judicial Magistrate, Fatehabad in FIR No. 417 dated 03.09.2003 under Section 7 of the Essential Commodities Act, 1955 (hereinafter ‘the Act’), was dismissed. The petitioner was sentenced as under:

| Offence              | Sentence                                                                                                                 |
|----------------------|--------------------------------------------------------------------------------------------------------------------------|
| Section 7 of the Act | Rigorous imprisonment of 6 months and a fine of Rs. 500/-, in default of which further rigorous imprisonment of 1 months |

2. Briefly, the facts are that SI Subh Ram received secret information stating that the petitioner-accused is selling LPG Cylinders, from his Jeep bearing registration no. HR-24-C-1659, at the rate of Rs. 270/- per cylinder instead of the fixed rate of Rs. 248.50/-, near bus stand of village Ayalaki. Thereafter, EHC Jaibir Singh approached the petitioner, in civil clothes, and bought a filled

cylinder for Rs. 270/- from him. The petitioner was apprehended and 42 filled and 3 empty cylinders were recovered from the said vehicle.

3. The prosecution examined 4 witnesses to prove its case. All incriminating material was put to the petitioner-accused in his statement recorded under Section 313 Cr.P.C. wherein he denied all allegations levelled by the prosecution and examined 1 witness in his defence. On assessing all material available on record, the learned trial Court convicted the petitioner vide judgment dated 27.10.2009. Aggrieved by the same, the petitioner approached the learned lower Appellate Court where his appeal was dismissed vide judgment dated 28.11.2011.

4. Learned counsel for the petitioner contends that the entire prosecution case is solely based on the evidence of official witnesses as no independent witnesses were joined during the investigation from the village, though available. The Assistant Food and Supply Officer was not joined in the raiding party, which vitiates the entire exercise. The learned Courts below have failed to appreciate that the cylinders recovered were owned by DW1-Harkauri Devi, owner of M/s Shaheed Manohar Lal Gas Agency, who supplied gas to Ratia and Fatehabad. Harkauri Devi also moved an application before the concerned Court requesting release of the 45 cylinders recovered as they are her property, being the owner of the said agency. She has further stated that they were carrying the cylinders in canter which broke down midway causing them to load the cylinders in the said Jeep, which was taken in possession by the police.

5. *Per contra*, learned State counsel submits that the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower appellate Court, as such, interference by this Court is not warranted.

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that on the basis of secret information received by the police party, 45 cylinders were recovered from the possession of the petitioner. However, no government authorised officer was joined in the said exercise in terms of Clause 7 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 dated 08.03.1988 (hereinafter 'the Order'). Clause 7 of the Order reads as follows:

***“7. Power of entry, search and seizure:-***

*1) an officer or the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by Central Government or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorized by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying herself that this order or any order made thereunder has been complied with:*

*(a) Stop and search any vessel or vehicle which the Officer has reason to believe has been, or is being or is about to be, used in the contravention of this Order;*

*(b) Enter or search any place with such aid or assistance as may be necessary;*

*(c) Seize and remove with such aid or assistance as may be necessary, the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, alongwith the vehicles, vessels or any other conveyances used in carrying such stock if he has reason to suspect that any provision of this Order has been or is being or is about to be, contravened in respect of such stock and thereafter take or authorise the taking of all measures necessary for securing the production of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyances so*

*seized before the Collector having jurisdiction under the provisions of section of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production.....”*

7. It is trite law that if a certain method is prescribed by law, it must be followed to accomplish the task, necessarily forbidding use of other methods. Reliance in this regard can be placed on the judgment rendered by the Hon’ble Supreme Court in **Dharani Sugars and Chemicals Ltd. v. Union of India and others (2019) 5 SCC 480**. Therefore, since Sub Inspector of Police does not find mention in Clause 7 of the order, he cannot be deemed to have the power to conduct the said raid and seize the 45 cylinders. Further, depriving the petitioner of his personal liberty in contravention of procedure established by law would amount to a direct violation of the fundamental rights enshrined in Article 21 of the Constitution.

8. Pertinently, a two-judge bench of the Hon’ble Supreme Court in **Avtar Singh and Another v. State of Punjab 2023 AIR SC 1588**, while speaking through Justice Rajesh Bindal, made the following observation qua clause 7 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 dated 08.03.1988:-

*“14. It nowhere prescribes that a Sub-Inspector of the Police can take action. No doubt, the aforesaid Clause provides that in addition to the specified officers, the persons authorised by the Central or State Government may take action under the Order. However, nothing has been placed on record to support the argument that the Sub-Inspector of the Police was authorised to take action under the aforesaid Order.”*

9. In view of the facts and circumstances of the present case and the

v. **State of Punjab (supra)**, the present petition is allowed. The impugned judgment dated 28.11.2011 passed by learned Sessions Judge, Fatehabad is set aside and the petitioner is acquitted of the charges framed against him.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)  
JUDGE

04.03.2024  
Ajay Goswami

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |